

broken packages at San Francisco, Calif., alleging that the article had been shipped by the Northern Creamery Co., from Great Falls, Mont., July 2, 1925, and transported from the State of Montana into the State of California, and charging adulteration in violation of the food and drugs act.

Adulteration of the article was alleged in the libel for the reason that a product deficient in butterfat had been substituted wholly or in part for the said article, and in that a valuable constituent, namely, butterfat, had been in part abstracted.

On July 28, 1925, the Fred L. Hilmer Co., San Francisco, Calif., having appeared as claimant for the property and having consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$940, in conformity with section 10 of the act, conditioned in part that it be brought into compliance with the act under the supervision of this department.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13705. Misbranding of butter. U. S. v. 270 Pounds of Blue Valley Butter. Decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 20179. I. S. No. 24791-v. S. No. C-4762.)

On or about June 20, 1925, the United States attorney for the Western District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 270 pounds of butter, remaining in the original unbroken packages at San Antonio, Tex., alleging that the article had been shipped by the Blue Valley Creamery Co., from Kansas City, Mo., on or about May 25, 1925, and transported from the State of Missouri into the State of Texas, and charging misbranding in violation of the food and drugs act as amended. The article was labeled in part: (Carton) "Blue Valley Butter Blue Valley Creamery Co. General Offices, Chicago, Ill. Net Weight One Pound."

Misbranding of the article was alleged in the libel for the reason that the statements borne on the cartons containing the article, "Net Weight One Pound," "Blue Valley Butter. Blue Valley Creamery Company," were false and misleading and deceived and misled the purchaser, in that the said cartons did not contain 1 pound of butter. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On July 17, 1925, the Beeks Produce Co. having appeared as claimant for the property and having admitted the allegations of the libel, judgment of condemnation was entered, and it was ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$225, in conformity with section 10 of the act.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13706. Alleged adulteration of butter. U. S. v. South Peacham Creamery. Tried to the court and a jury. Verdict of not guilty. (F. & D. No. 18100. I. S. No. 1861-v.)

On March 28, 1924, the United States attorney for the District of Vermont, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information and on or about April 11, 1925, an amended information against the South Peacham Creamery, a corporation, Barnet, Vt., alleging shipment by said company, in violation of the food and drugs act, on or about June 19, 1923, from the State of Vermont into the State of Massachusetts, of a quantity of butter in tubs which was alleged to be adulterated.

Analysis by the Bureau of Chemistry of this department of a sample of the article from each of 3 tubs showed 79 per cent, 77.8 per cent, and 78.6 per cent, respectively, of milk fat.

Adulteration of the article was alleged in the information for the reason that a product which contained less than 80 per cent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 per cent by weight of milk fat, as prescribed by the act of March 4, 1923, which the article purported to be.

On April 10, 1925, the defendant company having entered a plea of not guilty to the information, the case came on for trial before the court and a jury. After the submission of evidence, the court delivered the following instructions to the jury (Howe, D. J.) :

"GENTLEMEN OF THE JURY: I am going to give you my charge right now. These gentlemen can argue afterwards. We are going to finish this case up. This South Peacham Creamery is complained of for having too little butterfat in their butter. Now, you were all here in that other trial, weren't you, everyone of you? Is there anyone on this panel that didn't hear the other trial and my charge in that other case? Now, the question for you to decide is whether you are satisfied beyond a reasonable doubt that when this butter was shipped in interstate commerce it did not have 80 per cent butterfat. That's the question for you to decide.

"Now, in order to find the defendant guilty you must be satisfied beyond a reasonable doubt. The Government must prove beyond a reasonable doubt that when this butter was shipped it did not contain 80 per cent butterfat. You have heard the testimony of this chemist, who operates on one-fifteenth of an ounce. Now, as practical, reasonable men you heard him say that a slight error in computation would make a heavy difference when you apply it to a pound or 20 pounds. You have heard these butter makers testify it contained more than 80 per cent butterfat. Now, the question for you to decide is how much or how little credit you will give the testimony of the witnesses. You should keep in mind the presumption is that the butter did contain 80 per cent when it was shipped. If you return a verdict of guilty here, you must be satisfied beyond a reasonable doubt that when this was shipped it didn't contain 80 per cent butterfat. You apply the presumption of innocence, which is very old law, very sound law. If there is more than one theory in the case, both equally reasonable, one leading to innocence, the other leading to guilt, you should adopt the theory leading to innocence, because it is better and safer to believe good of a person rather than to believe evil of him. It is for you to say how much or how little credit is to be given to the testimony. If you are satisfied beyond a reasonable doubt this did not have 80 per cent of butterfat when it was shipped, you will find the defendant guilty. If you are not satisfied it contained less than 80 per cent butterfat, you will find the defendant not guilty.

"Well, gentlemen, if you are satisfied beyond a reasonable doubt that it didn't contain 80 per cent, find the defendant guilty. If you have a reasonable doubt about that, find it not guilty. If you are satisfied that it did contain more than 80 per cent, you will find it not guilty."

The jury then retired and after due deliberation returned a verdict of not guilty.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13707. Alleged adulteration and misbranding of butter. U. S. v. Barnet Creamery Association. Tried to the court and a jury. Verdict of not guilty. (F. & D. No. 18991. I. S. Nos. 15285-v, 15287-v.)

On November 20, 1924, the United States attorney for the District of Vermont, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Barnet Creamery Association, a corporation, Barnet, Vt., alleging shipment by said company, in violation of the food and drugs act, in various consignments, namely, on or about November 30 and December 3, 1923, respectively, from the State of Vermont into the State of Massachusetts, of quantities of butter, a portion of which was alleged to be adulterated and misbranded and the remainder of which was alleged to be misbranded. The article was labeled in part: "40# Net" or "40 Pounds Net."

Examination by the Bureau of Chemistry of this department of 10 boxes from each shipment showed an average weight of 39 pounds 5.3 ounces and 39 pounds 10 ounces, respectively. Analysis of a sample of the article from the shipment of December 3 showed 78.4 per cent of milk fat.

Adulteration was alleged in the information with respect to a portion of the article, in that a product deficient in milk fat had been substituted for butter, which the said article purported to be, and for the further reason that a product which contained less than 80 per cent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 per cent by weight of milk fat, as prescribed by the act of March 4, 1923.